



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201451040**
Release Date: 12/19/2014
Date: September 24, 2014
UIL Code: 501.09-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at

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1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Director, Exempt Organizations

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 24, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B =

D =

UIL:

501.09-01

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(9). The basis for our conclusion is set forth below.

Issue

Do you qualify for exemption under section 501(c)(9) of the Code? You do not, for the following reason.

Facts

You are a trust established on D date by an agreement between B, a union, and employers. You are a sub-trust of the B Welfare Fund which has the same trustees. The trustee board is made up of five employer and five union trustees.

Your purpose is to provide cost of living adjustment (COLA) payments to retirees of the B Pension Fund. You hold contributions from employers and pay the benefit to those persons who receive pensions from the B Pension Fund.

At the end of the plan year, your trustees determine the total market value of the fund assets, taking into account accrued income and expenses. The trustees then decide what portion of the

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market value of the assets will be distributed. That amount is divided by the total number of years of benefit service credit for all pensioners to determine a per credit service value. The per credit value is multiplied by each individual pensioner's years of benefit service credits to derive the allocable amount. Each pensioner will be paid the allocable amount, or the supplemental payment factor as defined under 29 C.F.R. § 2510.3.2(g)(3)(i), whichever is less.

Law

Section 1.501(c)(9)-1(c) of the Income Tax Regulations states that to be considered a VEBA under IRC 501(c)(9), an organization must provide for the payment of life, sick, accident or other benefits to its members or their dependents. Reg. 1.501(c)(9)-1(c).

Section 1.501(c)(9)-3(a) provides that an organization is not described in section 501(c)(9) if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e). Paragraph (b) relates to life benefits and paragraph (c) to sick and accident benefits.

Section 1.501(c)(9)-3(d) provides the term "other benefits" includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if:

- (1) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (2) It protects against a contingency that interrupts or impairs a member's earning power.

Section 1.501(c)(9)-3(e) provides examples of other benefits. ... Except to the extent otherwise provided in these regulations, as amended from time to time, other benefits also include any benefit provided in the manner permitted by paragraphs (5) et seq. of section 302(c) of the Labor Management Relations Act of 1947, 61 Stat. 136, as amended, 29 U.S.C. 186(c) (1979).

Section 1.501(c)(9)-3 (f) provides examples of nonqualifying benefits. Benefits that are not described in paragraphs (d) or (e) of this section are not other benefits. Thus, other benefits do not include ... any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement, or a benefit that is similar to the benefit provided under a stock bonus or profit-sharing plan. For purposes of section 501(c)(9) [26 USCS § 501(c)(9)] and these regulations, a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit-sharing plan if it provides for deferred compensation that becomes payable by reason of the passage of time, rather than as the result of an unanticipated event.

Reg. 1.501(c)(9)-3(e) gives specific examples of "other benefits" similar to sick, life or accident benefits, and provides that, "Except to the extent otherwise provided in these regulations, as amended from time to time, other benefits also include any benefit provided in the manner permitted by paragraphs (5) et seq. of section 302(c) of the Labor Management Relations Act of 1947, 61 Stat. 136, as amended, 29 U.S.C. 186(c) (1979)."

Reg. 1.501(c)(9)-3(f) provides that "benefits that are not described in paragraphs (d) or (e)... are not other benefits," and expressly states that benefits "similar to a pension or annuity payable at the time of ... retirement" are not "other benefits." For purposes of section 501(c)(9) "a benefit will be considered as similar to that provided under a pension... plan if it provides for deferred

compensation that becomes payable by reason of the passage of time, rather than as a result of an unanticipated event."

Reg. 1.501(c)(9)-7 states that "The term voluntary employees' beneficiary association in section 501(c)(9) is not necessarily coextensive with the term "employees' beneficiary association" as used in section 3(4) of ERISA 29 USC 1002(4), and the requirements which an organization must meet to be an "employees' beneficiary association" within the meaning of section 3(4) of ERISA are not necessarily identical to the requirements that an organization must meet in order to be a "voluntary employees' beneficiary association" within the meaning of section 501(c)(9)."

Application of Law

You are not exempt under section 501(c)(9) of the Code because you do not provide for the payment of life, sick, accident or other benefits to your members or their dependents, as required by Reg. 1.501(c)(9)-1(c). The supplementation of pension fund distributions to retirees is not a benefit similar to life, sick, or accident benefits described in paragraphs (b), (c), (d), or (e) of Section 1.501(c)(9)-3 of the Regulations.

COLA payments are not an "other benefit" described in paragraphs (d) and (e), as being provided in the manner permitted by paragraphs (5) et seq. of section 302(c) of the Labor Management Relations Act. Your payments are expressly excluded from the definition of "other" benefits by Reg. 1.501(c)(9)-3(f), because a COLA adjustment supplementing payments from a pension fund is a benefit "similar to a pension."

Your payment are deferred compensation that becomes payable by reason of the passage of time. Like a pension, you provide retirement income to employees, and like pension benefits, the amount of each payment is based on the premise that benefits increase with tenure and job longevity.

Applicant's Position

You hold that because COLA benefit is not a pension under IRC 401(a), COLA payments are not benefits of the kind expressly excluded by Reg. 1.501(c)(9)-3(f).

You also believe that Reorganization Plan No. 4 of 1978 Treasury ceded to the Department of Labor the power to impose the ERISA definition of "welfare benefit" on section 501(c)(9). Therefore, when ERISA describes COLA benefits as permissible for "employees' beneficiary associations," COLA benefits are also permissible for "voluntary employees' beneficiary associations."

Service Response to Applicant's Position

Our determination that you do not meet the requirements for exemption under section 501(c)(9) is based solely on the Internal Revenue Code and the associated Income Tax Regulations. As we explained above, your COLA benefit is of the kind expressly excluded by Reg. 1.501(c)(9)-3(f).

Your argument that the Treasury ceded the power to define welfare benefits based on ERISA

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provisions lies outside the scope of Code section 501. In fact, Reg. 1.501(c)(9)-7 disavows the notion that an "employees' beneficiary association" as defined by ERISA is necessarily identical to a "voluntary employees' beneficiary association" within the meaning of section 501(c)(9)."

Conclusion

You are not exempt under section 501(c)(9) of the Code because you do not provide for the payment of life, sick, accident or other benefits to your members or their dependents, as required by Reg. 1.501(c)(9)-1(c).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in

Publication 892, *How to Appeal an IRS Decision on Tax Exempt Status*.

Types of information that should be included in your appeal can be found on page 1 of Publication 892, under the heading "Filing a Protest". The explanation of your reasons for disagreeing (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Director, Exempt Organizations

Enclosure: Publication 892